

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHERRY LYNN REESE,)
Plaintiff,) CASE NO. C13-5351-RSL-MAT
v.)
CAROLYN W. COLVIN, Acting) REPORT AND RECOMMENDATION
Commissioner of Social Security,) RE: SOCIAL SECURITY
Defendant.) DISABILITY APPEAL
)
)

Plaintiff Sherry Lynn Reese proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's applications for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be reversed and remanded for additional administrative proceedings.

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FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1970.¹ She received her GED, and previously worked as a pet grooming manager, retail cashier, and barista. (AR 59-60, 242-56.)

Plaintiff filed applications for DIB and SSI, alleging disability beginning February 1, 2009. (AR 192-205.) Her applications were denied at the initial level and on reconsideration, and Plaintiff requested a hearing. (AR 101-04, 106-12, 116-18.)

On August 9, 2011, ALJ Rudolph M. Murgo held a hearing, taking testimony from Plaintiff and a vocational expert (VE). (AR 54-86.) On December 2, 2011, the ALJ held a supplemental hearing, taking testimony from Plaintiff, a medical expert, and a VE. (AR 36-53.) On January 12, 2012, the ALJ issued a decision finding Plaintiff not disabled. (AR 19-
27.)

Plaintiff timely appealed. The Appeals Council denied Plaintiff's request for review on March 20, 2013 (AR 1-7), making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

JURISDICTION

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

DISCUSSION

The ALJ followed the five-step sequential evaluation process for determining whether

1 Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule
of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic
Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United
States.

01 a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be
02 determined whether the claimant is gainfully employed. The ALJ found Plaintiff had not
03 engaged in substantial gainful activity since February 1, 2009, the alleged onset date. (AR
04 21.) At step two, it must be determined whether a claimant suffers from a severe impairment.
05 The ALJ found Plaintiff's status post disc herniation with fusion, chronic pain syndrome,
06 morbid obesity, degenerative disc disease of the cervical spine, chronic costochondritis,
07 fibromyalgia syndrome, major depressive disorder, posttraumatic stress disorder, and
08 borderline personality traits to be severe. (AR 21.) Step three asks whether a claimant's
09 impairments meet or equal a listed impairment. The ALJ found that Plaintiff's impairments
10 did not meet or equal the criteria of a listed impairment. (AR 22-23.)

11 If a claimant's impairments do not meet or equal a listing, the Commissioner must
12 assess residual functional capacity (RFC) and determine at step four whether the claimant
13 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff able to
14 perform less than the full range of light work: she can lift and carry 15 pounds occasionally
15 and 10 pounds frequently. She can sit eight hours and stand/walk four hours out of an eight-
16 hour day, with a sit/stand option. She is limited to occasional overhead lifting bilaterally. She
17 cannot climb ropes, ladders, scaffolds, stairs, or ramps, and she can occasionally balance,
18 stoop, kneel, crouch, and crawl. She should avoid exposure to hazards, heavy equipment, and
19 heights. She cannot interact with the public and can have only occasional interaction with
20 coworkers and supervisors. (AR 23.) With that assessment, the ALJ found Plaintiff unable to
21 perform her past relevant work. (AR 25-26.)

22 The ALJ proceeded to step five of the sequential evaluation, where the burden shifts to

01 the Commissioner to demonstrate that the claimant retains the capacity to make an adjustment
02 to work that exists in significant levels in the national economy. With the assistance of VE
03 testimony, the ALJ found Plaintiff capable of performing other representative jobs, such as
04 small product assembler and extruder machine operator. (AR 26-27.)

This Court's review of the ALJ's decision is limited to whether the decision is in accordance with the law and the findings supported by substantial evidence in the record as a whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

13 Plaintiff argues the ALJ erred by (1) failing to account for all limitations identified by
14 consultative examiner Terilee Wingate, Ph.D., and failing to provide sufficient reasons to do
15 so; (2) crediting the testimony of medical expert Julie Frederick, Ph.D.; and (3) discounting
16 her credibility.² She asks that the ALJ's decision be reversed and her claim remanded for an
17 award of benefits or, in the alternative, for further proceedings. The Commissioner argues the
18 ALJ's decision is supported by substantial evidence and should be affirmed.

Medical Opinions

Where contradicted, a treating or examining physician's opinion may not be rejected

2 Plaintiff also alleges that the ALJ's RFC assessment and VE hypothetical were incomplete
22 (Dkt. 16 at 9-10), but in doing so merely reiterates previous arguments. Thus, the Court will not
address this argument as a separate assignment of error.

01 without “specific and legitimate reasons” supported by substantial evidence in the record for
 02 so doing.” *Lester v. Chater*, 81 F.3d 821, 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499,
 03 502 (9th Cir. 1983)). Plaintiff argues that although the ALJ purported to give “great weight”
 04 to Dr. Wingate’s opinion, he actually failed to account for all of the limitations she identified
 05 and did not provide specific, legitimate reasons to discount those portions of the opinion.
 06 Medical expert Dr. Frederick reviewed Dr. Wingate’s opinion and explained how she
 07 interpreted it regarding Plaintiff’s functionality, and the ALJ indicated that he found her
 08 testimony to be credible. (AR 25.) Because the opinions of Dr. Wingate and Dr. Frederick
 09 are intertwined, the Court will address them together.

10 Dr. Wingate’s functional analysis and medical opinion statement reads:

11 Ms. Reese is able to understand, remember and learn simple and some
 12 complex tasks. Due to depressed mood, anxiety and chronic pain she has
 13 difficulty sustaining a routine daily or weekly work schedule without
 14 interruption from her depression or anxiety. She is tense and fearful and she
 15 has poor stress tolerance. She has sufficient judgment to make some routine
 16 work decisions and avoid work hazards. She is fearful in public places and she
 17 will not go into public settings alone, so she should avoid working with the
 18 public. She has one friend and has some contact with her family, however, she
 19 would not work well with a lot of coworkers. She might be able to interact
 20 with a supervisor and 1-2 coworkers. She reported that she is [capable] of
 21 handling money with the help from her spouse.

22 (AR 953.) Dr. Frederick testified that she interpreted Dr. Wingate’s opinion regarding
 Plaintiff’s “difficulty sustaining a routine daily or weekly work schedule without interruption
 from her depression or anxiety” to mean that she “would need a very predictable work
 schedule” and “work that was very predictable and routine.” (AR 42.) She further elaborated
 on her interpretation of Dr. Wingate’s opinion, explaining that although Dr. Wingate factored
 in Plaintiff’s chronic pain when assessing Plaintiff’s ability to sustain a work schedule, she

01 believed chronic pain was a physical (rather than mental) issue. (AR 42.) Dr. Frederick also
02 indicated that she believed Plaintiff's social limitations were "moderate" as to coworkers and
03 supervisors, and precluded work with the public. (AR 41.)

04 The ALJ indicated that he credited the opinions of Dr. Wingate and Dr. Frederick, and
05 found that Plaintiff's mental limitations required, *inter alia*, restriction to "occasional"
06 interaction with coworkers and supervisors, and "structured work with little change." (AR 23,
07 25, 51.) According to Plaintiff, the ALJ erred in (1) failing to restrict the *number* of
08 coworkers and supervisors that Plaintiff can interact with, because Dr. Wingate's opinion was
09 more specific than the RFC assessment; (2) failing to include a restriction on Plaintiff's ability
10 to sustain a work schedule without interruption, as indicated by Dr. Wingate, in the RFC
11 assessment; (3) failing to discount Dr. Frederick's opinion on the grounds that she improperly
12 factored out the effect of Plaintiff's chronic pain when assessing her limitations.

13 As to the first allegation, the Commissioner argues that the ALJ's RFC assessment is
14 consistent with Dr. Wingate's opinion regarding social limitations, because a limitation to
15 "occasional" interaction with coworkers and supervisors adequately accounts for an inability
16 to work with more than 1-2 coworkers. As support for this argument, the Commissioner cites
17 *Blaser v. Astrue*, 2010 WL 887306, at *12 (D. Or. Mar. 10, 2010), but her parenthetical
18 summary of the case is inaccurate. In *Blaser*, a State agency consultant found that the
19 claimant could work "with coworkers on an occasional basis but will do better if work with
20 one or two on a frequent basis," and cannot work "closely" with the public and "should have
21 minimal routine coworker contact." *Id.*, 2010 WL 887306, at *2, *12. The ALJ did not
22 include a limitation on coworker interaction in his RFC assessment, because he found that

01 limitation to be inconsistent with the record. *Id.*, 2010 WL 887306, at *13. The claimant
 02 argued on appeal that the ALJ should have included a “minimal co-worker contact” in his VE
 03 hypothetical, and the court found that because the ALJ properly found that this limitation was
 04 not supported by the record, it did not need to be included in the VE hypothetical. *Id.* The
 05 court did not hold that “a restriction to ‘very minimal’ coworker contact accommodated the
 06 inability to work with more than one or two coworkers on a frequent basis or more coworkers
 07 on an occasional basis,” as described by the Commissioner. Dkt. 18 at 7. The State agency
 08 consultant (not the ALJ) in *Blaser* found that the claimant could work with coworkers on an
 09 occasional basis; he also explicitly found that a restriction to working with 1-2 coworkers on a
 10 frequent basis was distinctly optimal. 2010 WL 887306, at *2. Thus, *Blaser* does not stand
 11 for the proposition that a restriction to “occasional” coworker interaction accommodates an
 12 inability to work with more than 1-2 coworkers.

13 In this case, both Dr. Wingate (AR 953) and Dr. Frederick (AR 41) opined that
 14 Plaintiff could work only with a limited number of coworkers. The ALJ did not incorporate
 15 such a limitation, but instead limited only the amount of time that Plaintiff could work with
 16 coworkers, without explaining how this limitation could have accommodated the social
 17 limitations identified by experts whose opinions he purported to credit. Because the ALJ
 18 failed to provide specific and legitimate reasons to exclude the social limitations identified in
 19 these medical opinions, on remand³ the ALJ shall reconsider the opinions of Dr. Wingate and
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21 3 Plaintiff contends that this case should be remanded for payment of benefits, but Dr.
 22 Wingate’s and Dr. Frederick’s opinions — even if credited — do not necessarily establish that Plaintiff is disabled, and thus remand for additional proceedings is appropriate. See *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000).

01 || Dr. Frederick regarding Plaintiff's social limitations.

Plaintiff's remaining two arguments converge regarding her limitations in the ability to sustain a work schedule, and are both rooted in a mischaracterization of Dr. Wingate's opinion. Dr. Wingate stated that Plaintiff's "depressed mood, anxiety and chronic pain" make it difficult for her to sustain a normal work schedule "without interruption from her depression or anxiety." (AR 953.) Dr. Frederick interpreted that opinion to mean that a predictable work schedule and routine job tasks would accommodate Plaintiff's difficulty in sustaining work (AR 42), and the ALJ explained that he credited Dr. Frederick's interpretation of Dr. Wingate's opinion. (AR 25.) Although Plaintiff contends that Dr. Frederick erroneously factored out the effect of Plaintiff's chronic pain when considering Dr. Wingate's opinion, Dr. Wingate's opinion itself indicates that Plaintiff's potential schedule interruptions are caused by depression and anxiety (not chronic pain). (AR 953.) Because Dr. Frederick reasonably interpreted Dr. Wingate's opinion, and the ALJ provided a reasonable explanation for his interpretation of Dr. Frederick's and Dr. Wingate's opinion regarding Plaintiff's difficulty sustaining work, Plaintiff has not established error. *See Morgan v. Comm'r of the Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld.").

Credibility

Plaintiff contends that the ALJ erred in discounting her credibility. In discussing the credibility of Plaintiff's allegations, the ALJ summarized medical evidence (showing improvement with treatment and less limiting restrictions than Plaintiff alleges) and cited

01 Plaintiff's daily activities (shopping, preparing meals, attending her sons' sporting events, and
02 completing light chores) that undermine her allegations. (AR 23-25.) According to Plaintiff,
03 neither of the ALJ's reasons is sufficiently clear and convincing. *See Lingenfelter v. Astrue*,
04 504 F.3d 1028, 1036 (9th Cir. 2007).

05 The basis for Plaintiff's challenge is not entirely clear. Plaintiff admits that she "may
06 have overstated her specific functional limitations on lifting or walking, for example[.]" Dkt.
07 16 at 8. Plaintiff nonetheless argues that the ALJ should have credited Dr. Wingate's opinion
08 as to her mental limitations, and should have found her pain to be debilitating given her
09 medication regime. Dkt. 16 at 8-9. As explained *supra*, the Court agrees that the ALJ erred
10 in assessing Dr. Wingate's opinion, but this error has no bearing on the adverse credibility
11 determination. Nor do medication prescriptions alone establish any particular functional
12 limitations, especially where Plaintiff's own statements suggest that using pain medication
13 increased her activity level without side effects. (AR 1038.) Plaintiff has not shown that the
14 ALJ improperly disregarded any of her own testimony, and thus the adverse credibility
15 finding should be affirmed.

16 CONCLUSION

17 For the reasons set forth above, the Court recommends this matter should be
18 REVERSED and REMANDED for additional proceedings.

19 DATED this 15th day of November, 2013.

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21 Mary Alice Theiler
22 Chief United States Magistrate Judge